IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs November 14, 2006

STATE OF TENNESSEE v. CARL WESLEY CARTER

Direct Appeal from the Circuit Court for Blount County
No. C-15468 D. Kelly Thomas, Jr., Judge

No. E2006-00560-CCA-R3-CD - Filed December 19, 2006

The appellant, Carl Wesley Carter, pled guilty in the Blount County Circuit Court to domestic assault, a Class A misdemeanor, and the trial court sentenced him to eleven months, twenty-nine days to be served as thirty days in jail and the remainder on supervised probation. Subsequently, the trial court revoked the appellant's probation and ordered that he serve his sentence in confinement. On appeal, the appellant claims that the trial court abused its discretion by revoking his probation. Upon review of the record and the parties' briefs, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court is Affirmed.

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which DAVID H. WELLES and JOHN EVERETT WILLIAMS, JJ., joined.

J. Liddell Kirk (on appeal), Knoxville, Tennessee, and Mack Garner (at trial), Maryville, Tennessee, for the appellant, Carl Wesley Carter.

Paul G. Summers, Attorney General and Reporter; Preston Shipp, Assistant Attorney General; Michael L. Flynn, District Attorney General; and Ellen Berez, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. Factual Background

The record reflects that on March 20, 2005, the appellant hit his wife on the head with a ceramic coffee mug. The victim went to the emergency room, where she spoke with a police officer, and the appellant was arrested for aggravated domestic assault. On April 11, 2005, the appellant pled guilty to domestic assault, and the trial court sentenced him to eleven months, twenty-nine days to be served as thirty days in jail and the remainder on supervised probation. The trial court also imposed a two-hundred-dollar fine, ordered the appellant to complete fifty hours of community service, and ordered the appellant to have no contact with the victim.

On August 1, 2005, the appellant's probation officer filed a probation violation report, alleging that the appellant never reported a valid address to the officer, had not reported to the officer since May 2005, owed probation fees and court costs, and never signed up for community service work. On August 4, 2005, the appellant's probation officer filed a second probation violation report, alleging that the appellant also had been in frequent contact with the victim and had been arrested on August 1, 2005, for driving on a suspended license. On August 8, 2005, the trial court ordered the appellant to serve forty days in jail. On December 9, 2005, the appellant's probation officer filed a third probation violation report, alleging that the appellant violated his probation by furnishing an incorrect address to the officer, testing positive for cocaine in October 2005, not paying anything toward his probation fees and court costs, and not performing his community service. A probation violation warrant was issued, and on February 24, 2006, the warrant was amended to reflect that the appellant also had been charged with committing an assault on October 12, 2005.

At the February 2006 probation revocation hearing, Roger Montgomery, the appellant's probation officer, testified that he took over the appellant's case from another officer in late August or early September 2005. Montgomery stated that in October 2005, the appellant tested positive for cocaine and was charged with assault. However, the victim of that assault had reported to Montgomery that the appellant would not be prosecuted. The appellant still owed about seven hundred dollars in court costs and had not paid anything toward the costs since October 2005. He also had performed no community service work. Montgomery said that on the morning of the revocation hearing, he filed an amendment to the revocation report, alleging that the appellant had been arrested for child abuse on January 15, 2006. He stated that he had heard the appellant had been sick and in the hospital but had no personal knowledge of the appellant's illness. He had not seen any change in the appellant's behavior or an adaptation to probation and said that without drug treatment and very strict supervision, the appellant would not be successful on probation. On cross-examination, Montgomery testified that after the appellant tested positive for cocaine, he spoke with the appellant and the appellant denied using the drug. He believed the appellant had a substance abuse problem, but Montgomery did not know the extent of the problem. He never visited the appellant's home but believed the appellant was employed while on probation. At some point, Montgomery mailed a letter to the appellant, but the letter was returned as undeliverable.

The then forty-five-year-old appellant testified that he was married and had no children. On December 15, 2005, he was arrested for this most recent probation violation and was put in jail. The appellant became ill and was allowed to leave the jail to seek medical treatment. He spent eleven days in the hospital and nine days at home before he was rearrested. On January 20, 2006, he was charged with assault but intended to defend himself against the charge in court. He stated that he also had been recently charged with child abuse after he grabbed his sixteen-year-old niece, who had kicked his mother. He stated that he had an attorney and intended to defend against that charge as well. The appellant worked full time pouring concrete for Correll Enterprises while on probation. In August 2005, he spent forty days in jail for a previous probation revocation. When he was released from jail, he lived in his mother's house at 5816 Old Niles Ferry Road with his mother, wife, nephew, and niece. He stated that the name of the road had changed to Correll Way.

The appellant testified that he should not have tested positive for cocaine because he did not use the drug. His probation officer told him that he had also tested positive for alcohol and marijuana. The appellant had wanted to have his probation supervision transferred to another county because it was difficult for him to work and get to scheduled meetings with his probation officer. On October 14, 2005, the appellant was supposed to meet with Robert Montgomery but was busy at work and telephoned Montgomery in order to postpone the meeting. Montgomery refused to reschedule the meeting, so the appellant met with him and Montgomery gave him a drug test. He said that Montgomery "sort of got hateful" with him and that he did not report back to the officer. The appellant said that he had a substance abuse problem but had been in jail for the past two months, had not used any drugs or alcohol during that time, and could pass a drug test. He stated that he had never received treatment for his substance abuse problem and needed treatment. If the trial court allowed him to remain on probation, the appellant said he could pay off his fines and court costs because "we've got the money to pay them off." He stated that he had not done any of his community service work because he had wanted to do it all in February 2006, when the concrete-pouring business was slow. He said that if he was released from jail, he would report to his probation officer, pay his fine and court costs, and perform his community service.

The State recalled Roger Montgomery to testify on rebuttal. He stated that the appellant never informed him that the street name for his residence had changed and that the appellant never talked with him about having his probation supervision changed to another county. He stated that he never tested the appellant for alcohol in October 2005 and never told the appellant he had tested positive for alcohol.

The trial court concluded that the appellant was "wasting Mr. Montgomery's time" and had violated probation by (1) failing to pay his court costs even though he had the money to do so, (2) not performing his community service work, (3) not reporting to his probation officer, (4) not giving his probation officer his correct address, and (5) testing positive for cocaine. The trial court also noted that the appellant had been "furloughed" from jail in order to go to the hospital and was supposed to return to jail when he got out of the hospital. However, "he took a little nine-day stint at home and during that time got arrested, while on the furlough." The trial court revoked the appellant's probation.

II. Analysis

The appellant contends that the trial court abused its discretion by revoking his probation. Specifically, he contends that the trial court erred by finding that he had the money to pay his court costs because "the evidence presented at the hearing is not sufficient to make such a finding." The appellant also contends that his mailing address was accurate and that the trial court improperly concluded he gave his probation officer an incorrect address. Finally, he contends that given the nature of his job and his work schedule, he did not willfully refuse to perform his community service. The State claims that the trial court properly revoked the appellant's probation. We agree with the State.

A trial court may revoke a sentence of probation upon finding by a preponderance of the evidence that the defendant has violated the conditions of his release. Tenn. Code Ann. § 40-35-311(e). The trial judge is not required to find that a violation of the terms of probation has occurred beyond a reasonable doubt. Stamps v. State, 614 S.W.2d 71, 73 (Tenn. Crim. App. 1980). The evidence need only show that the judge has exercised conscientious judgment in making the decision rather than acting arbitrarily. Id. On appeal, this decision will not be disturbed absent a finding of an abuse of discretion. State v. Mitchell, 810 S.W.2d 733, 735 (Tenn. Crim. App. 1991). In order to find such an abuse, there must be no substantial evidence to support the conclusion of the trial court that a violation of the conditions of probation has occurred. State v. Harkins, 811 S.W.2d 79, 82 (Tenn. 1991). Such a finding "'reflects that the trial court's logic and reasoning was improper when viewed in light of the factual circumstances and relevant legal principles involved in a particular case.'" State v. Shaffer, 45 S.W.3d 553, 555 (Tenn. 2001) (quoting State v. Moore, 6 S.W.3d 235, 242 (Tenn. 1999)).

Even if we were to assume, arguendo, that the trial court abused its discretion by concluding the appellant failed to pay court costs despite having the money to do so, gave his probation officer an incorrect address, and willfully failed to perform his community service work, the appellant does not contest the trial court's conclusion that he also violated probation by testing positive for cocaine and by failing to report to his probation officer. Either of those reasons alone justifies a probation revocation. In any event, the appellant's claim is without merit. The appellant himself testified that he had the money to pay the court costs, and he admitted that he did not perform any community service. Although he reported that his mailing address was correct, his probation officer testified that he sent a letter to the address and that the letter was returned as undeliverable. The trial court obviously accredited the probation officer's testimony. The appellant has flagrantly and repeatedly violated the terms of his probation, and the trial court properly revoked his probation.

III. Conclusion

Based upon the record and the parties' briefs, we affirm the judgment of the trial court.

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NORMA McGEE OGLE, JUDGE